

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HUGH ROBERT HEDEEN, JR.,

Defendant-Appellant.

UNPUBLISHED

June 6, 2006

No. 259798

St. Clair Circuit Court

LC No. 03-001361-FH

Before: Cavanagh, P.J., and Fort Hood and Servitto, JJ.

FORT HOOD, J. (*concurring in part and dissenting in part*).

I concur in the majority opinion's conclusions that: (1) substantial and compelling reasons existed to justify a departure from the guidelines; (2) the record contains no indication that the sentence imposed was the result of partiality based on the sentencing court's religious beliefs; and (3) defendant's scoring and sentence did not violate Michigan sentencing laws. However, I respectfully dissent from the majority's conclusion that the sentence violates the principle of proportionality.

As an initial matter, it should be noted that defendant did not allege that the principle of proportionality was violated by imposing the ten to fifteen year sentence for third-degree criminal sexual conduct, MCL 750.520d(1)(a), in his appellate brief. When a defendant fails to argue how his sentence for the convicted offense is disproportionate, the issue is waived. *People v Hill*, 221 Mich App 391, 397; 561 NW2d 862 (1997).

Moreover, appellate review of the sentence is not reviewed de novo, but is limited. The structure of the legislative sentencing guidelines and the appellate system itself recognize that "the trial court is optimally situated to understand a criminal case and to craft an appropriate sentence for one convicted in such a case." *People v Babcock*, 469 Mich 247, 267; 666 NW2d 231 (2003). Therefore, the trial court may depart from the sentencing range when a substantial and compelling reason exists for the departure. *Id.* The decision to depart may be based on an offense characteristic or an offender characteristic previously incorporated into the guidelines if the sentencing court finds that the characteristic has been given inadequate or disproportionate weight. *Id.* at 267-268; see also MCL 769.34(3)(b).

The Legislature gave the sentencing court the responsibility of making the difficult determination of rendering the appropriate sentence "largely on the basis of what has taken place in its direct observation." *Babcock, supra* at 268. "Because of the trial court's familiarity with

the facts and its experience in sentencing, the trial court is better situated than the appellate court to determine whether a departure is warranted in a particular case.” *Id.* Review de novo would allow appellate judges to substitute their own judgment for that of the trial court. *Id.* Therefore, an abuse of discretion standard is applied to sentencing decisions, which acknowledges that there will be no single correct outcome because there may be more than one reasonable and principled outcomes. *Id.* at 269. “When the trial court selects one of these principled outcomes, the trial court has not abused its discretion and, thus, it is proper for the reviewing court to defer to the trial court’s judgment.” *Id.* That is, when the sentencing court chooses an outcome falling outside the principled range of outcomes, an abuse of discretion occurs. *Id.*

On this record, I cannot conclude that the trial court abused its discretion. That is, the sentence imposed was within the range of principled outcomes. The victim in this case was particularly vulnerable because her mother essentially abandoned her. Although defendant did not allocute at sentencing, his defense counsel opined that the victim was “left in his lap” when her mother’s boyfriend threw her out of the family home. The victim’s family instability gave defendant unlimited access to the victim, and instead of calling the appropriate authorities or attempting to locate the victim’s birth father, he preyed upon her despite knowing her age. After the victim had one abortion, she reported that defendant was angry with her, yet he continued to engage in unprotected sexual activities with her. Based on the unique ability of the trial court to assess the factual information presented in the lower court, I cannot conclude that an abuse of discretion occurred. Therefore, I would affirm the sentence.

/s/ Karen M. Fort Hood